
(1951) 04 AP CK 0004
In the Andhra Pradesh High Court

Pasnuri Ambarao

APPELLANT

Vs

Lakhiram Ramchandriah and Others

RESPONDENT

Date of Decision : 02-04-1951

Acts Referred:

Constitution of India, 1950 — Article 161, 372

Citation : AIR 1951 AP 96 : (1951) CriLJ 922

Hon'ble Judges : Siddiqi, J;Manohar Pershad, J

Bench : Division Bench

Judgement

Manohar Pershad, J.—This is an appln. For the grant of a certificate to appeal to H.E.H. the Nizam under the Appeals to H.E.H. the Nizam Regulation 1368 F. (XXI [21] of 1358 F). No amendment has been made in this petn. it is argued on behalf of the paints, that the Dastoor-ul-Amil is still in force, & relying on Article 372 Clause (1) of the Constitution, it is contended that the existing law continues & it does not matter whether the Judicial Committee exists or not. The second contention i9 that the petnrs." right to appeal which existed on 25 1.1950 cannot be impliedly taken away by the Constitution of India being made applicable to the State of Hyderabad.

2. On behalf of the other side it is contended that having regard to the provisions of Article 874 (4) of the Constitution & the Firman of H. E. H. the Nizam dated 23-11-1949, which clearly declares & directs that the provisions of the Constitution of India shall, as from the date of its commencements supersede & abrogate all other constitutional provisions inconsistent therewith which are at present in force in this State, the Dastoor-ul-Amal has become defunct & ineffective It is farther contended on behalf of the other side that in the case of Janardana Reddy v. The State, or. Misc. petn.C No. 71 of 1950 it has been laid down by their Lordships of the S.C. that the H.C. of Hyderabad, before 26 1-1950, was not a H.C. within the territory of India for the purposes of the Constitution, & so no question of grant of any certificate arises at all.

3. In order to appreciate the arguments of the learned Advocates on behalf of

the parties, a reference to the petn. & Article 874 (4) of the Constitution & the Firman of H. E. H. the Nizam is necessary. This petn. was filed on 12-12-1949 under the Dastoor. ul-Amal of 1358 P. The Constitution came into force on 26-1-1951. No amendment has been made in the petn. We asked the learned Advocate whether he wished to make any amendment in the petn, He stated before us that he did not wish to make any amendment. H. E. H the Nizam through a Firman dated 23-11-1949 has declared that the provisions of the Constitution shall, as from the date of its commencement, supersede & abrogate all other constitutional provisions inconsistent therewith which are at present in force in the State, Thus, in other words, H. E H. the Nizam accepted the Constitution of India as the Constitution of Hyderabad State. The petn. was filed before this date, but no amendment has been made, & as the Constitution of India has become applicable to Hyderabad, the petn., as it is, cannot be tenable. The argument is that the Dastoor-ul-Amal is still in force as the existing law. I am afraid I cannot accept this argument.

4. Article 374 (4) cleanly lay down

on & from the commencement of this Constitution, the jurisdiction of the authority functioning as the P.C. in a State specified in Part B of Sch. 1 to entertain & dispose of appeals & petns. from or in respect of any judgment, decree or order of any Ct. within that State shall cease, & all appeals & other proceedings pending before the said authority at such commencement shall be transferred to, & disposed of by, the S.C.

This Article abolishes the jurisdiction of the P.C. of the Hyderabad State, & after the Constitution of India came into force that body & its jurisdiction altogether ceased to exist. It is conceded on behalf of the petnrs that no proceedings or appeal in respect of the judgment of the H.C. was pending before the Hyderabad P.C. before its abolition; nothing got transferred to the S.C. by the operation of this Article . It is stressed on behalf of the petnrs, that on 25-1-1950 they had a right to appeal to H. E, H. the Nizam which cannot be impliedly taken away by the Constitution of India being made applicable to the State of Hyderabad. A similar argument) was advanced before their Lordships of the S.C. in the case of Janardana Reddy v, The Stats: (Cri Misc. petn. no. 71 of 1950), refd. to above which was not accepted. Thus I do not agree with the contention of the petnrs.

5. To accept the contention of the Advocate for the petnrs. would be to accept the existence of the Committee or that the Nizam has power to appoint a Committee & hear the appeals. The learned Vakil concedes that the Committee does not exist. In view of this I have to see whether the Nizam can appoint a Committee or whether he himself has retained any right to hear the appeals. H. E. H. the Nizam by his Firman of 23-11-1949 has accepted the Constitution of India & directed it to be applicable to the Hyderabad State from 26-1-1950 Thus, I have to see whether under the Constitution any such power has been given to the Nizam. Under the Constitution, the Nizam is called the Rajpramukh of Hyderabad. Article S66, Clause (21) defines the Rajpramukh as the person who

for the time being is recognised by the President as the Nizam of Hyderabad. The powers of a Rajpramukh are similar to those of a Governor. Art 161 of the Constitution defines the powers of a Governor. In this Article no such power of hearing the appeals has been given to the Governor or the Rajpramukh, There is no other provision in the Constitution to show whether the Rajpramukh has such powers. Further, in the Constitution there is no provision that the Rajpramukh could appoint such a body. On the contrary, Article 374 Clause (4) clearly enacts that the authority shall cease to exist. When the Rajpramukh has no power to bear appeals or appoint; Section Committee for the same, the contention that the Dastoor-ul-Amal (XXI [21] of 1358 F.) is still in force cannot hold good. Thus, to my mind the Dastoor-ul-Amal is not only inoperative but has become ineffective & so no certificate can be granted under the Dastoor-ul-Amal. As the Advocate for the petnrs. has not amended the petn & has not advanced any argument under the Articles relating to the grant of Certificate for appeal to the S. C, I do not wish to discuss that question here. Petn. is, therefore, dismissed. Thi3 order shall govern the other connected petns.

6. Siddiqi, J. - I agree.